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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,553	11/14/2003	T. Douglas Moser	TDMF121766	7975

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/713,553	MOSER ET AL.	
	Examiner	Art Unit	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-19 is/are pending in the application.
- 4a) Of the above claim(s) 4,5 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2, 6-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

Examiner agrees with Applicant that claim 6 is within the ambit of the elected species.

An action on claim 6 is included in this office action. Claims 4, 5, and 17-19 remain withdrawn.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-~~2~~ and 6-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brick et al. (TB 98-2; CO and WY Agric. Exp. Stat.) in view of Miller et al. (MT200204 AG 3/2002; Montana Stat. U. Exp. Ser.).

As to Claim 1, Brick et al. disclose a method of commercial production of green Cicer beans (page 2, 4th para.) wherein the method comprises selecting acreage based on relative risk of caramelization for a crop of Cicer beans (page 2 last two para. and page 3 first two para.; in that these regions grow and harvest commercially viable Cicer beans); planting Cicer beans in the selected acreage (page 2 last two para. and page 3 first two para.); and harvesting the Cicer beans when the growing degree days reach a predetermined accumulated value (Table 2 on page 12 in that DTF and DTM are determined by growing degree days and harvest is optimal at DTM) with some green beans (page 6, 2nd para.) which, at least for the green beans, would inherently

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have an accumulated value between 70 and 110 since they are green beans. Not disclosed is monitoring of growing degree days (GDD) by calculating a daily growing degree value. Miller et al., however, discloses calculating growing degree days for Cicer (page 2 at the “*Growing season*” section). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Brick et al. by using daily GDD as disclosed by Miller et al. so as more precisely predict and determine DTM so as to more adequately prepare for harvest.

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed is a particular GDD formula and predetermined accumulated value. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Brick et al. as modified by Miller et al. by using a particular GDD formula and predetermined accumulated value depending upon crop species to arrive at a model that optimally and robustly predicts DTM, or any other physiologic growth stage.

As to Claims 6-9, Brick et al. as modified by Miller et al. further disclose using micro and macro climate data (in that the crop is/will grow in climatic regions that are conducive for growth of a “drought tolerant, cool-season, legume crop” of page 2, 1st para., of Brick et al.) which would be historical and global ocean surface temperature to determine years with or without the effects of El niño.

As to Claims 10 and 11, Brick et al. as modified by Miller et al. further disclose using fertilizer (page 4 “Nutrient Requirement of The Crop” section of Brick et al.).

As to Claim 12, Brick et al. as modified by Miller et al. further disclose upright plants suitable for mechanical harvesting (from “direct cutting” of “Harvest Procedures” of page 6 of Brick et al.).

As to Claims 13-16, Brick et al. as modified by Miller et al. further disclose using Kabuli seed types (“Commercial Varieties and Seed Sources” of page 3 of Brick et al.); irrigated or dryland (last para. of page 1 of Brick et al.); and, 4-48 in. row spacing (page 4, 2nd complete para. of Brick et al.).

Response to Arguments

Applicant's arguments filed 6 June 2005 have been fully considered but they are not persuasive. The crux of Applicant's arguments are: (1) Brick et al. teaches away from the production of green *Cicer* beans (Remarks page 7, 1st complete para.); and, Miller et al. teaches away from the production of green *Cicer* (Remarks page 8, 2nd and 3rd para.).

As to argument (1), although Brick et al. disclose production of non-green *Cicer* beans, Brick et al. does disclose the harvest of green *Cicer* beans at page 6, 1st complete para (see MPEP 2123 - Nonpreferred embodiments constitute prior art - for the concept that a reference does not teach away when the reference asserts no discovery beyond what is known in the art (citing 27 F.3rd at 554)), These beans would consequently have accumulated between 70 and 110 growing degree days since Applicant has observed green *Cicer* beans to have this range of growing degree days (see Specification page 11, lines 14-18).

As to argument (2), although Miller et al. disclose production of non-green *Cicer* beans, Miller et al. does disclose the harvest of green *Cicer* beans at page 2, 3rd col. (see MPEP 2123 -

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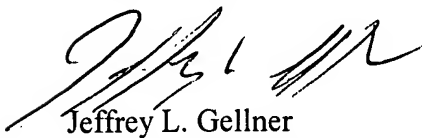
Nonpreferred embodiments constitute prior art - for the concept that a reference does not teach away when the reference asserts no discovery beyond what is known in the art (citing 27 F.3rd at 554). These beans would consequently have accumulated between 70 and 110 growing degree days since Applicant has observed green *Cicer* beans to have this range of growing degree days (see Specification page 11, lines 14-18).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner
Primary Examiner
Art Unit 3643